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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,495	05/23/2006	Alphonsus Tarcisius Schipper	NL 031376	2316
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EXAMINER				
NGUYEN, LINH THI				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/580,495

Applicant(s)

SCHIPPER ET AL.

Examiner

LINH T. NGUYEN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 8-11, 14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) 4, 5, 7, 12, 13 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 17 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 17 is drawn to a computer readable medium having stored thereon a computer program, where the computer readable medium as defined in the specification on page 4 line 21 can be a signal or carrier wave or paper; therefore, fail(s) to fall within a statutory category of invention.

A claim directed to a computer readable medium having stored thereon a computer program, where the computer readable medium as defined in the specification can be a signal or carrier wave or paper, covers a signal or carrier wave or paper which are non-statutory as noted, *infra*.

A claim directed to a computer program itself or signal or carrier wave is non-statutory because it is not:

A process occurring as a result of executing the program, or

A machine programmed to operate in accordance with the program, or

A manufacture structurally and functionally interconnected with the program in a manner which enable the program to act as a computer component and realize its functionality, or a composition of matter.

A claim directed to a paper having thereon a computer program is non-statutory, because it covers printed matter which is non-statutory. It is not until the program is converted into an electronic form to be read and executed by the processor that it becomes functional descriptive material. There is no functional relationship between the paper and the computer program (see *In re Gulack*, 217 USPQ 401, *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed.Cir.1994)). The program as disclosed is merely printed on the paper, hence the program is merely non-functional descriptive material, therefore, the claimed paper with a computer program printed on it is non-statutory. See *Ex parte S*, 25 JPOS 904, *Ex parte Glenn*, 155 USPQ 42, *In re Lockert*, 65 F.2d 159, 17 USPQ 515.

See MPEP § 2106.01. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Wamerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things."

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They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 8-11, 14, 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hsiao et al (US Patent Number 7274864).

In regards to claims 1, 9 and 17, Hsiao et al discloses a method for obtaining a data recording on a first medium from a data stream originating from a second medium, the data stream comprising a plurality of data segments each having a different recording start time (Fig. 1, element 113, Column 3, lines 9-13), the method comprising: generating a recording segment of the data recording on the first medium based on a determination of a duration of a present recording segment (Column 2, lines 63 to Column 3, lines 1-7), characterized in that a new recording segment is generated when a recording time discontinuity exceeds a threshold value (Fig. 2, step 204), the recording time discontinuity

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being a difference between a recording end time of a first data segment and a recording start time of a next data segment (Column 3, lines 8-46).

In regards to claims 2 and 10, Hsiao et al discloses a method according to claim 1, in which the threshold value is a function dependent on a desired recording segment duration (d) and the present recording segment duration (Column 3, lines 8-21).

In regards to claims 3 and 11, Hsiao et al discloses a method according to claim 1, in which the new recording segment is generated by insertion of index markers of a first type in the data recording on the first medium (Fig. 3, PRTR is pointer that begin the first frame).

In regards to claims 6 and 14, Hsiao et al discloses a method according to claim 1, further comprising a pre-scan of the data stream to obtain the recording time discontinuities in the data stream (Column 4 lines 28-55).

In regards to claims 8 and 16, Hsiao et al discloses a method according to claim 1, in which the method further comprises translation of selected index markers of the first type into index markers of a second type based on a predetermined set of criteria (Fig. 3, PTR pointer and FPTR pointer).

Allowable Subject Matter

Claims 4, 5, 7, 12, 13, 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regards to claims 4 and 12, none of the references alone or in combination discloses a method in which the threshold value function is a continuously decreasing function in time.

In regards to claims 7 and 15, none of the references alone or in combination discloses a method, in which a subset of recording time discontinuities is selected from all detected recording time discontinuities as starting points for a new segment, for which the value of $CMI.sub.ps$ is minimized, $CMI.sub.ps = C * (1 - coverage) + I * imbalance$ in which $coverage = (C \sum \delta C) / (S \sum \delta S)$ is a coverage property of the data recording, with $\delta C = \text{difference in recording start time of recording segment } C - \text{recording end time of the previous recording segment } C$; $\delta S = \text{difference in recording start time of data segment } s - \text{recording end time of the previous data segment } s$; and $imbalance = \sum |dur.sub.c - avrdur|$ is an imbalance property of the data recording, with $avrdur = \text{predefined average recording segment duration}$; $dur.sub.c = \text{duration of recording segment } c$; and $C = \text{a predefined constant weight factor for the coverage property}$; $I = \text{a predefined constant weight factor for the imbalance property}$.

Claims 5 and 13 depend on claims 4 and 12, therefore, are allowable for the same reason.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tojo, Nakatani et al, and Nagasaka et al discloses an apparatus for reproducing/recording time frames of audios or videos onto a disc.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINH T. NGUYEN whose telephone number is (571)272-5513. The examiner can normally be reached on 10:00am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LN

June 10, 2009

/Wayne Young/

Supervisory Patent Examiner, Art Unit 2627